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CNEX LABS, INC. and YIREN HUANG

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

YIREN HUANG, an individual, and CNEX
LABS, INC., a Delaware corporation,

Plaintiffs,

v.

FUTUREWEI TECHNOLOGIES, INC., a Texas
corporation; HUAWEI TECHNOLOGIES CO.,
LTD., a Chinese corporation, and DOES 1
through 10,

Defendants.

Case No.: 5:18-cv-00534-BLF

NOTICE OF MOOTNESS

Date: April 5, 2018
Time: 9:00 a.m.
Courtroom: 3 – 5th Floor

Complaint Filed: December 28, 2017

Plaintiffs Yiren Ronnie Huang and CNEX Labs, Inc. (“CNEX”) (collectively, “Plaintiffs”) hereby provide notice to the Court that Defendant Futurewei Technologies, Inc.’s (“Futurewei”) Motion to Dismiss or, in the Alternative, to Transfer, or to Stay (Dkt. No. 12) is moot in light of Plaintiffs filing their First Amended Complaint (Dkt. No. 21) against Futurewei and Huawei Technologies Co., Ltd. (“Huawei”) (collectively, “Defendants”). Plaintiffs’ First Amended Complaint adds Huawei as a defendant to the action and asserts additional causes of action against Defendants.

1 Although Futurewei's motion did not specifically recite Fed. R. Civ. P. 12(b), Futurewei's
2 motion, which seeks to enforce a purported forum-selection clause, is treated as a motion to
3 dismiss pursuant to Fed. R. Civ. P. 12(b)(3). *See Doe I v. AOL LLC*, 552 F.3d 1077, 1081 (9th
4 Cir. 2009). In fact, if Futurewei were to contend that its motion is not a response to the
5 Complaint under Rule 12, Futurewei could only be found to have failed to timely respond to the
6 Complaint and waived its objection to venue. Futurewei cannot avoid this conclusion by
7 claiming incorrectly that it was not served with process prior to removal. (*See* Declaration of
8 Paul C. Hashim (Dkt. 3) ¶ 14.) Contrary to that assertion, Futurewei was served with process on
9 January 2, 2018. *See* Exhibit A. Plaintiffs' First Amended Complaint should therefore moot
10 Futurewei's motion.

11 Dated: February 14, 2018

FENWICK & WEST LLP

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13 By: /s/ Michael J. Sacksteder
14 Michael J. Sacksteder

15 Attorneys for Plaintiffs
16 CNEX LABS, INC. and YIREN HUANG
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ATTORNEYS AT LAW
MOUNTAIN VIEW